IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/08/2004

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THE HONOURABLE Mr. JUSTICE M.CHOCKALINGAM

W.P.No.5181 of 2004

M/s. Lords Insullations India Private Limited
16/38, Kripasankari Street,
West Mambalam, Chennai 600 033
rep. by its Director Mr.P.S.Rajan .... Petitioner

-Vs-

1. The Regional Director,
Department of Company Affairs,
Southern Region, Chennai.

2. M/s. Lloyd Insulations (India) Limited,
Punj House, M-13, Connaught Place,
New Delhi 110 001. .... Respondents

Writ petition filed under Article 226 of The Constitution of India
praying for the issue of Writ of certiorari as stated therein.

For Petitioner : Mr. A.Prabhakara Reddy

For Respondents : Mr. S.Udayakumar, ACGTSC R1
Mr. V.Balasubramanian R2

:O R D E R
Invoking writ jurisdiction of this Court, the petitioner
sought for a writ of certiorari to quash the order of the first respondent
dated 15.09.2003 as confirmed by review order dated 19.2004 directing the
petitioner's company to delete the words "Lords" from its existing name and
change to some other name/prefix.

2. Affidavit in support of this writ petition and counter affidavit
are perused. Heard the learned counsel for either side.

3. Learned counsel while advancing his argument on behalf of the
petitioner would submit that the petitioner company was incorporated under
Companies Act on 10.03.2003 under No.CIN U74210TN2003PTC050487. Certificate
of incorporation was also issued to the petitioner's company. That eversince
the petitioner's company was incorporated with the main objects as Engineers
and contractors specialised in the field of Thermal, Hydro and acoustic

insulation and suppliers of all insulation, ancillary materials, among other objects registered its name as Lords Insulations India Private Limited. Within a short period, the petitioner's company while was in its progress, the second respondent out of business rivalry and jealous moved an application before the first respondent for directions to the petitioner to change the name of the petitioner on the allegation that the name of the petitioner company is causing confusion with their customers alleging that the petitioner's name resembles the second respondent's name. After giving an opportunity of being heard, the first respondent by an order dated 15.09.2003 directed the petitioner to delete the word "Lords" and change to some other name/prefix within three months therefrom. A representation was also made by the petitioner on 5.11.2003, which was also rejected. Under such circumstances, there arose the filing of the instant writ petition. Added further, the learned counsel for the petitioner would submit that the order of

the first respondent cannot be sustained for the reason that it is inconsistent with the requirements of what is needed under Section 22 of the Companies Act.

4. The review petition filed by the petitioner has also not been considered properly. The first respondent before passing the order under Section 22 of the Companies Act with object mind, should have arrived at the conclusion that the name of the petitioner's company too nearly resembles the name of the second respondent company and then only can proceed with issuing directions to the petitioner company to change the name. Before taking such conclusion that two names resembles too closely, the authorities should have seen the nature of the business, nature of the customers and the possibility of confusion between the two names. It is pertinent to point out that the customers in this specific industry is highly qualified and they make orders for the service only after thorough evaluation of the offers, after taking into account the commercial capabilities by inviting offers from several operators in the field. The customers cannot be mislead by any resemblance in the names alone. The selection and ultimate placing of the orders for each order depends upon the personal satisfaction of the customer relating to the capacity to execute the order to the satisfaction of the customers, quality of service and other parameters and standards in the industry. All these factors have not been considered by the authority, namely, the first respondent. That it is not even the case of the second respondent that the name of the petitioner's company is too nearly resembles the name of the second respondent company within the meaning of Section 22 of the Companies Act 1956 .

5. The learned counsel for the petitioner took the Court to Section 22 of the Companies Act and also the guidelines brought forth under the same and thus the first respondent has not made out any case for rectification of the name under Section 22 of the Companies Act and hence the order of the first respondent is got to be quashed.

6. Heard the learned counsel for the first respondent, who would submit that the first respondent Regional Director, Department of Company Affairs, only after taking into consideration the factual and legal position

has passed the order of direction, which is got be sustained.

7. The learned counsel for the second respondent would submit that his company M/s. Lloyd Insulations India Limited was registered in the year 1977 and the petitioner company was registered in the year 200 3. The petitioner-company was started by two of the directors in the company and they come out of the second respondent company, who knew about all the methods, techniques of the products have started the company in the name of "Lords Insullations India Private Limited" That the names of the companies if looked into, the words 'Lloyd' and ' Lords' have phonetic resemblance and except these two words all other words in the name of both the companies are exactly the same. It is a case where the petitioner-company was heard by Regional Director, Southern Region, Department of Company Affairs twice and hence it will be quite evident from the very reading of the order that the first respondent has considered the representation put forth by the petitioner's side and also convinced with the reasons adduced by the second respondent and therefore a direction was given to change the name ' Lords' found in the petitioner-company and hence the order of the first respondent has got to be sustained.

8. After a careful consideration of the rival submissions and the scrutiny of the available materials, this Court is of the considered view that the writ petition carries no merits. Admittedly, the second respondent registered it is company on 06.06.1977 and certificate has been issued in the name "Lloyd Insulations India Limited". It is not in controversy that the petitioner-company Lords Insullations India Private Limited was registered on 10.03.2003. Pursuant to the representation made by the second respondent company on 05.06.2003, after issuing lawyer's notice, a show cause notice was served on the petitioner by the first respondent on 20th June 2003. The petitioner issued a reply through his counsel. After due enquiry, the order under challenge came to be passed by the first respondent under Section 2 2 of the Companies Act. A reading of that order would clearly reveal that the first respondent - authority has passed the impugned order with legally acceptable and sufficient reasons.

9. As rightly pointed out by the authority that except the word ' Lloyd' and 'Lords' all other words in the name of both the companies are exactly same. Needless to say that the word 'Lloyd' and 'Lords' are phonetically resembling. The products of both the companies are same, namely, the insulations and ancillary materials. The contention of the petitioner's side that the customers in the specific industry were highly qualified and hence they could not be mislead by any resemblance by names alone cannot be accepted. To pass an order under Section 22 of the Companies Act, what are all the requisite is that names should be found either identical or too similar. In the instant case, as pointed out earlier, the words "Lloyd" and "Lords" are phonetically resembling and all other words in the name of the companies are exactly same and hence this Court is unable to see any reason warranting to quash the order passed by the first respondent. Accordingly, the writ petition stands dismissed. No costs. However, the petitioner is granted two months time here from for the purpose of rectification, as per the order of the first respondent.

Index:Yes.
Internet:Yes.

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To

The Regional Director,
Department of Company Affairs,
Southern Region, Chennai.